

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

B & D Electric, Inc.,
Cardinal Electric Motor Repair, Inc.,
Chock Full O' Nuts Corporation,
Delta-Y Electric Company,
Flanders Electric Motor Service, Inc.
Florida Power & Light Company,
Interstate Power Company,
Mount Vernon Electric Motor Service, Inc.,
National Wrecking Company, and
T & R Electric Supply Company, Inc.

Defendants.

Civil Action No.

Complaint



COMPLAINT

The United States of America, by and through the undersigned attorneys, by authority of the Attorney General of the United States and at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

PRELIMINARY STATEMENT OF THE CASE

1. This is a civil action brought pursuant to Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9607 and 9613. The United States seeks to recover the costs incurred by the United

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States under Section 104 of CERCLA, 42 U.S.C. § 9604, in responding to the release or threatened release of hazardous substances at or from the site known as the Missouri Electric Works Superfund Site ("Site"), located in Cape Girardeau, Missouri. The United States also seeks a declaratory judgment pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), holding each Defendant jointly and severally liable for any future response costs or damages incurred by the United States in connection with the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) because the alleged release and threatened release of hazardous substances occurred in this district and because a substantial part of the events or omissions giving rise to the claims occurred in this district.

DEFENDANTS

4. Defendant B & D Electric, Inc. ("B & D Electric") is a corporation organized and existing pursuant to the laws of the State of Indiana.

5. Defendant Cardinal Electric Motor Repair, Inc. ("Cardinal Electric") is a corporation organized and existing pursuant to the laws of the State of Missouri.

6. Defendant Chock Full O' Nuts Corporation ("Chock Full O' Nuts") is a corporation organized and existing pursuant to the laws of the State of New York.

7. Defendant Delta-Y Electric Company ("Delta-Y") is a corporation organized and existing pursuant to the laws of the State of Missouri.

8. Defendant Flanders Electric Motor Service, Inc. ("Flanders") is a corporation organized and existing pursuant to the laws of the State of Indiana.

9. Defendant Florida Power & Light Company ("FPL") is a corporation organized and existing pursuant to the laws of the State of Florida.

10. Defendant Interstate Power Company ("Interstate Power") is a corporation organized and existing pursuant to the laws of the State of Delaware.

11. Defendant Mount Vernon Electric Motor Service, Inc. ("Mt. Vernon") is a corporation organized and existing pursuant to the laws of the State of Indiana.

12. Defendant National Wrecking Company ("National Wrecking") is a corporation organized and existing pursuant to the laws of the State of Illinois.

13. Defendant T & R Electric Supply Company, Inc. ("T & R Electric") is a corporation organized and existing pursuant to the laws of the State of South Dakota.

GENERAL ALLEGATIONS

14. The Site occupies a 6.4 acre tract in a predominately commercial/industrial area. The Site is bounded on the north by retail and warehouse properties, on the south by a residence, a commercial storage company and a construction company, and on the east by a warehouse. A wetland has been identified approximately 700 feet south of the Site. The Mississippi River is approximately 1.6 miles east of the Site. The legal description of the Site is Southwest 1/4 of the Northwest 1/4 of Section 12, Township 30 North, Range 13 East, in Cape Girardeau County, Missouri.

15. From approximately 1954 to 1988, Missouri Electric Works, Inc. ("MEW") operated a business that purchased, sold, serviced, rebuilt, repaired, salvaged, scrapped, and remanufactured electrical transformers and other electrical equipment at the Site.

16. From at least 1974 to 1988, MEW and National Electric Service Company, Inc. ("National Electric") had a joint venture agreement whereby National Electric would locate transformers and other electrical equipment, purchase the equipment and arrange to ship it to the Site, where the transformers and equipment were stored, repaired, remanufactured, resold, or salvaged by MEW. National Electric and MEW shared in any profit or loss as a result of the subsequent sale of the equipment.

17. At relevant times, many transformers contained oil that included polychlorinated biphenyls ("PCBs") as a constituent ("PCB oil").

18. In at least 1982, B & D Electric sent transformers containing PCB oil to the MEW Site for repair.

19. From at least 1982 to 1987, Cardinal Electric sent transformers containing PCB oil to the MEW Site for repair.

20. In at least 1983, a division of Chock Full O' Nuts, Old Judge Coffee Division, sold transformers containing PCB oil to National Electric and MEW, which transformers were sent to the Site.

21. From at least 1981 to 1983, Delta-Y sold transformers containing PCB oil to MEW, which transformers were sent to the Site.

22. From at least 1971 to 1988, Flanders sent transformers containing PCB oil to the MEW Site for repair.

23. From at least 1976 to 1980, FPL sold transformers and other electrical equipment containing PCB oil to National Electric and MEW, which transformers were sent to the Site.

24. From at least 1980 to 1983, Interstate Power sold transformers containing PCB oil to MEW, which transformers were sent to the Site.

25. From at least 1970 to 1983, Mt. Vernon sent transformers containing PCB oil to the MEW Site for repair.

26. In at least 1977, National Wrecking sold transformers containing PCB oil to MEW, which transformers were sent to the Site.

27. In at least 1977, T & R Electric sold transformers containing PCB oil to MEW, which transformers were sent to the Site.

28. Employees of MEW, while working at the Site, drained PCB oil from transformers and other equipment, and stored PCB oil in drums at the Site. Some of this stored PCB oil was disposed at the Site.

29. During the operation of the MEW business, PCBs and other hazardous substances leaked and/or were spilled onto the ground, and the Site became contaminated with PCBs and other hazardous substances.

30. In 1984, the Missouri Department of Natural Resources ("MDNR") inspected the Site and found 55-gallon drums containing PCB oil. These drums had been used by MEW to store PCB oil that had been drained from transformers and other electrical equipment that had been sent to the Site. Many of these drums were leaking. Other empty drums were scattered around the Site.

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31. In 1986, MDNR and EPA observed transformers that had been stored in the field at the Site. Some of these transformers contained PCB oil. Some of the PCB oil had leaked or been spilled onto the Site. Other transformers and electrical equipment at the Site had been dismantled and discarded.

UNITED STATES' RESPONSE ACTIONS

32. EPA has conducted a "response" action, as defined in Section 101(25) of CERCLA, 42 U.S.C. §9601(25), in response to the release or threat of release of hazardous substances at the Site.

33. From at least 1985 to 1992, EPA undertook removal and investigative actions pursuant to Section 104(a) and (b) of CERCLA, 42 U.S.C. § 9604(a) and (b), to define the nature and extent of contamination and to control further migration of hazardous substances from the Site.

34. From at least 1988 to 1990, potentially responsible parties ("PRPs") undertook additional investigations at the Site under the oversight of EPA.

35. These investigations provided additional information regarding the extent of the PCB contamination in the soils at the Site and also revealed the existence of volatile organic compound ("VOC") and PCB contamination in the groundwater at the Site.

36. EPA determined that over 70% of the Site's surface soil was contaminated with PCBs at concentrations exceeding 10 parts per million ("ppm"). Four acres of contaminated surface soil contained PCB concentrations of at least 500 ppm. The PCB concentration in the soil at the Site was determined to be as high as 58,000 ppm.

37. PCB contaminated soil has migrated to areas outside the MEW property. The highest off-Site concentration of PCBs was 2,030 ppm.

38. The PCB contamination occurred when PCB-contaminated oil in transformers and other electrical equipment sent to the Site by the Defendants and others was spilled, poured, leaked and/or otherwise placed onto the ground and entered into the soil and the groundwater at the Site.

39. PCB's are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

40. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, the Site was placed on the National Priorities List ("NPL"), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on February 21, 1990. 55 Fed. Reg. 6158 (1990).

41. On September 28, 1990, after a public comment period pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, the Regional Administrator, EPA, Region VII, issued a Record of Decision ("ROD"), selecting a remedial alternative for the soils and groundwater at the Site.

42. A PRP group of approximately 175 former MEW customers agreed to implement the remedy EPA selected for the Site by entering into a remedial design/remedial action ("RD/RA") Consent Decree in late-1991. Because the ROD did not address PCB contamination in groundwater, the consent decree included a provision for an in-depth study of the deeper groundwater. The RD/RA Consent Decree was lodged with the United States District Court for the Eastern District of Missouri in June 1992 and was entered in December 1997 after several years of litigation.

43. Work to be performed pursuant to the RD/RA Consent Decree under the oversight of EPA included the on-site thermal treatment of the PCB-contaminated soils and further investigation of PCB-contaminated groundwater.

44. During the litigation over the entry of the consent decree, the PRPs that signed the RD/RA CD proposed amending the ROD to allow thermal desorption, as well as on-site incineration to decontaminate PCB-contaminated soils at the Site. In September 1994 the PRPs that signed the RD/RA CD submitted another feasibility study to EPA to discuss the merits of thermal desorption. EPA Region VII issued an Explanation of Significant Differences to the ROD in February 1995.

45. Soil remediation work at the Site has been completed.

46. The United States has incurred costs in responding to the releases or threatened releases of hazardous substances at and/or from the Site, including costs of enforcement.

47. The United States may continue to incur costs of response.

CLAIM FOR RELIEF

48. Paragraphs 1-47 are realleged and incorporated herein by reference.

49. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

(a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section -

- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and
- (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such

person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for -

(A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan

50. Each Defendant is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

51. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

52. Each transformer or other piece of electrical equipment is a "facility", within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

53. In at least 1982, B & D Electric by contract, agreement, or otherwise arranged for the disposal of hazardous substances, including PCBs, found in transformers or other electrical equipment owned or possessed by B & D Electric, at the Site.

54. From at least 1982 to 1987, Cardinal Electric by contract, agreement, or otherwise arranged for the disposal of hazardous substances, including PCBs, found in transformers or other electrical equipment owned or possessed by Cardinal Electric, at the Site.

55. In at least 1983, Chock Full O' Nuts by contract, agreement, or otherwise arranged for the disposal of hazardous substances, including PCBs, found in transformers or other electrical equipment owned or possessed by Chock Full O' Nuts, at the Site.

56. From at least 1981 to 1983, Delta-Y by contract, agreement, or otherwise arranged for the disposal of hazardous substances, including PCBs, found in transformers or other electrical equipment owned or possessed by Delta-Y, at the Site.

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57. From at least 1971 to 1988, Flanders by contract, agreement, or otherwise arranged for the disposal of hazardous substances, including PCBs, found in transformers or other electrical equipment owned or possessed by Flanders, at the Site.

58. From at least 1976 to 1980, FPL by contract, agreement, or otherwise arranged for the disposal of hazardous substances, including PCBs, found in transformers or other electrical equipment owned or possessed by FPL, at the Site

59. From at least 1980 to 1983, Interstate Power by contract, agreement, or otherwise arranged for the disposal of hazardous substances, including PCBs, found in transformers or other electrical equipment owned or possessed by Interstate Power, at the Site.

60. From at least 1972 to 1983, Mt. Vernon by contract, agreement, or otherwise arranged for the disposal of hazardous substances, including PCBs, found in transformers or other electrical equipment owned or possessed by Mt. Vernon, at the Site .

61. In at least 1977, National Wrecking by contract, agreement, or otherwise arranged for the disposal of hazardous substances, including PCBs, found in transformers or other electrical equipment owned or possessed by National Wrecking, at the Site.

62. In at least 1977, T & R Electric by contract, agreement, or otherwise arranged for the disposal of hazardous substances, including PCBs, found in transformers or other electrical equipment owned or possessed by T & R Electric, at the Site.

63. Defendants B & D Electric, Cardinal Electric, Chock Full O' Nuts, Delta-Y, Flanders, FPL, Interstate Power, Mt. Vernon, National Wrecking, and T & R Electric are within the class of persons described in Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), in that the defendants or predecessors-in-interest to each such defendant arranged for the disposal or

treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances (including PCBs) found in transformers and other electrical equipment owned or possessed by the defendants, at the Site.

64. Materials disposed of at the Site include "hazardous substances," as defined by Section 104(14) of CERCLA, 42 U.S.C. §9601 (14).

65. There has been and continues to be a "release" or substantial threat of a release of such hazardous substances at the Site within the meaning of Section 101(22) of CERCLA, 42 U.S.C. 9601(22) and 40 C.F.R. § 300.5.

66. The United States has undertaken, continues to undertake, and in the future will undertake response actions at the Site, in response to releases or threatened releases of hazardous substances, pollutants, and contaminants as defined at Sections 101(23-25) of CERCLA, 42 U.S.C. §§ 9601 (23-25), and within the meaning of Sections 104 and 107 of CERCLA, 42 U.S.C. §§ 9604 and 9607.

67. As a result of the releases or threatened releases of hazardous substances from the Site, the United States has incurred and will continue to incur response costs, within the meaning of Sections 101(23-25), 42 U.S.C. §§ 9601 (23-25), and as used in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

68. EPA issued Special Notice Letters to each of the defendants in December 1990 demanding payment of unreimbursed costs at the Site. The demand initiated the accrual of prejudgment interest on those costs pursuant to Section 107(a) of CERCLA, 42 U.S.C. §9607(a).

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69. As of July 31, 2002, the United States has incurred unreimbursed response costs of at least \$5,458,473.84, not including interest, in response to the releases or threatened releases of hazardous substances at or from the Site.

70. The response costs incurred by the United States at and in connection with the Site were incurred in a manner not inconsistent with the National Contingency Plan, which was promulgated pursuant to Section 105(a) of CERCLA, 42 U.S.C. § 9605 (a), and which is codified at 40 C.F.R. Part 300 et seq.

71. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), the defendants are jointly and severally liable for all unreimbursed response costs incurred by the United States in connection with responses to releases or threatened releases of hazardous substances at the Site, including oversight and enforcement costs.

72. Pursuant to Section 113 (g) (2) of CERCLA, 42 U.S.C. § 9613 (g) (2), the United States is entitled to a declaratory judgment that each and every defendant is jointly and severally liable for such further response costs or damages that the United States may incur at the Site.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, prays that the Court:

1. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607 (a), enter judgments against each Defendant, jointly and severally, in favor of the United States for the amount of all unreimbursed response costs that have been incurred by the United States at the Site, including interest and the United States' attorney fees, costs, and disbursements in this action;


2. Enter a declaratory judgment pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that defendants are jointly and severally liable under 107(a) of CERCLA, 42 U.S.C. §

9607(a), for further response costs to be incurred by the United States in connection with the Site; and

3. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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NEW Site File
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